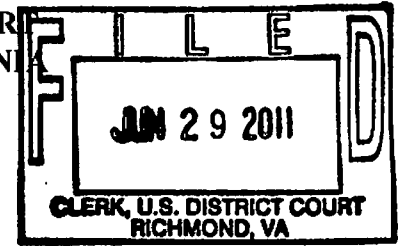


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



JOHN DAVID McBRIDE,

Petitioner,

v.

Civil Action No. 3:11CV179

HAROLD W. CLARKE,

Respondent.

MEMORANDUM OPINION

John David McBride, a Virginia prisoner, brings this 28 U.S.C. § 2254 petition for a writ of habeas corpus. McBride challenges his convictions in the Circuit Court for the County of Fairfax of carnal knowledge by intercourse of a child less than fifteen years of age and carnal knowledge by fellatio of a child less than fifteen years of age. By Memorandum Opinion and Final Order entered on June 9, 2011, the Court dismissed McBride's § 2254 petition as an unauthorized, successive petition. On June 16, 2011, the Court received McBride's Motion to Reconsider that June 9, 2011 Memorandum Opinion and Final Order.

"[R]econsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (internal quotation marks omitted). Relief under Rule 59(e) is appropriate "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993) (citing *Weyerhaeuser Corp. v. Koppers Co.*, 771 F. Supp. 1406, 1419 (D. Md. 1991); *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625, 626 (S.D. Miss. 1990)). McBride fails to satisfy any of the circumstances for granting Rule 59(e) relief. To the extent

that McBride wishes to file a successive § 2254 petition, he must first obtain the permission of the United States Court of Appeals for the Fourth Circuit. 28 U.S.C. § 2244(b)(3)(A).

McBride's Motion for Reconsideration (Docket No. 19) will be DENIED.

An appeal may not be taken from the final order in a § 2254 proceeding unless a judge issues a certificate of appealability ("COA"). 28 U.S.C. § 2253(c)(1)(A). A COA will not issue unless a prisoner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). No law or evidence suggests that McBride is entitled to further consideration in this matter. A certificate of appealability will be DENIED.

An appropriate Final Order shall issue.

Date: 6-29-11
Richmond, Virginia

<u>/s/</u> James R. Spencer Chief United States District Judge
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